

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed March 13, 2003. Claims 1-46, 48-57, and 59-74 are pending in this patent application. The Examiner rejects Claims 1-46, 48-57, and 59-74. Applicant has amended Claims 1, 27, 48-49, and 73. Claims 60-61 and 68-69 are cancelled. Applicant respectfully submits that these amendments will not require that a new search be conducted and will not necessitate new or different grounds of rejection. Accordingly, Applicant respectfully requests reconsideration and favorable action in this case.

Information Disclosure Statement

An Information Disclosure Statement (IDS) and accompanying PTO-1449 form were submitted on March 11, 2002. The Examiner has not provided an indication that the submitted references were considered by the Examiner. For the Examiner's convenience, Applicant has enclosed copies of the previously submitted IDS and PTO-1449 form. Additionally, Applicant has included a copy of the date-stamped postcard indicating the submission of the IDS. Applicant respectfully requests that the Examiner provide the appropriate indication that these references have been considered by initialing next to the references on the PTO-1449 form.

Section 101 Rejections

It is unclear from the current Office Action whether the Examiner rejects Claim 35 under 35 U.S.C. § 101 as lacking patentable utility. In the Office Action mailed October 3, 2002, the Examiner stated that Claim 35 lacks patentable utility because "tracking votes to their source in an election is generally in contradiction to anonymity in voting laws." In the present Office Action, the Examiner states that if the term "voting record" is interpreted to mean how individual voters voted, then Claim 35 lacks patentable utility because it would violate voter anonymity. This is the proper interpretation of "voting record," as Claims 34, on which Claim 35 depends, recites "storing one or more voter selections in a voting record." However, the Examiner notes that if the term "voting record" is interpreted to mean a tabulation of votes, then this is permissible but is taught by U.S. Patent No. 5,189,288 issued to Anno, et al. ("Anno").

Applicant respectfully submits, as in the previous response filed January 27, 2003, that Claim 35 is not in contradiction to anonymity required by voting laws. The unique identifier disclosed in Claim 35 links the voting record to a particular *booth* and not to a particular voter. The voting record, which merely stores one or more voter selections, also does not link the voting record to a particular voter. At most, the voting record is linked to a particular voting booth, which *numerous* voters may use throughout the voting process. Thus, a particular vote may only be linked to the voting booth in which it was cast and not the specific voter who cast the vote in that booth. This clearly does not violate voter anonymity rules. Furthermore, even if the invention of Claim 35 did violate voter anonymity in some locales based on the voting laws, the invention still possesses utility in that it may be used in locations where vote tracking is a common and allowable practice. For at least these reasons, Applicant respectfully requests reconsideration and allowance of Claim 35.

Section 103 Rejections

The Examiner rejects Claims 1, 4-6, 8-11, 14-16, 18-24, 26-27, 30-32, 34-37, 40-46, 48-53, 56-57, 59-62, 65, 68-69, 71, and 74 under U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,081,793 issued to Challener, et al. ("Challener") in view of U.S. Patent No. 5,189,288 issued to Anno, et al. ("Anno"). For the reasons set forth below, Applicant respectfully traverses these rejections.

Challener discloses a system and method to maximize the privacy of a voter's identity and the contents of a ballot. (*Challener*, Abstract). The system uses voter information stored on a smart card which is used during the voting process to verify the voter's identity to allow for secure voting. (*Challener*, Col. 3; Lines 2-36). The voter's selections are placed on an electronic encoded ballot. (*Challener*, Col. 8; Lines 10-18).

Anno discloses a voting tabulation system in which a key associated with a voter is used to gain access to a voting terminal. (*Anno*, Abstract). A computer screen presents the voting selections to the voter and the voter proceeds with the voting process. (*Anno*, Col. 2; Lines 12-19). The voting results are stored electronically and are tabulated within the voting terminal. (*Anno*, Col. 2; Lines 24-27). In addition to the electronic ballot, a paper ballot is produced with a machine-readable bar code representing the voter's selections. (*Anno*, Col. 5; Lines 34-44 and FIGURE 1, item 106).

Claim 1, as amended, of the present application recites the following:

An advanced voting system, comprising:
an election key generator operable to generate an election key storing information related to a voter;
one or more computing devices operable to:
 interface with the election key;
 retrieve information from the election key;
 present ballot questions to the voter based on the information retrieved from the election key; and
 receive interactive voter selections from the voter; and
a ballot generator operable to generate tangible encoded ballots encoded with the voter selections;
 wherein at least a portion of the encoded voter selections are both machine- and human-readable.

Claims 27, 48, and 49, as amended, recite similar, although not identical, limitations.

Claims 1, 27, and 48-49, as amended, incorporate the elements of cancelled Claims 61 and/or 69. Neither *Challener* nor *Anno* disclose a ballot generator operable to generate encoded ballots encoded with the voter selections where at least a portion of the encoded voter selections are both machine- and human-readable, as recited in amended Claim 1, and similarly in amended Claims 27, 48, and 49. With respect to Claims 61 and 69, the Examiner states that it is old and well known that paper ballots have human readable sections and that it "would have been obvious to one of ordinary skill in the art ... to include ... human readable selections because this provides a backup system in case a machine reader for the paper ballots breaks." (Office Action mailed 3/13/03, page 6, ¶ 2-3).

In order to establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in

the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference, or the combination of references, must teach or suggest all of the claim limitations. *See M.P.E.P. §2142.*

Under this standard for determining obviousness, Claims 1, 27, and 48-49 are patentable over the art of record because none of the references alone or in combination teach, suggest, or disclose each and every element of the above-identified claims. As stated above, the limitations of Claims 1, 27, and 48-49, as amended (specifically that "at least a portion of the encoded voter selections are both machine- and human-readable"), are not provided by the cited art. However, the Examiner attempts to address the void in the prior art by stating that it would have been obvious to have a ballot comprised of both human- and machine-readable portions. Applicant respectfully reminds the Examiner that such a broad and conclusory rejection is improper for a number of reasons. If "common knowledge" or "well known" art is being relied on to combine the references, Applicant respectfully requests that a reference be provided in support of this position pursuant to M.P.E.P. § 2144.03. If personal knowledge is being relied on, Applicant respectfully requests that an affidavit supporting such facts be provided pursuant to M.P.E.P. § 2144.03. Additionally, speculation in hindsight that "it would have been obvious" to make the proposed combination because the proposed combination would be helpful (i.e., would provide a "backup system") is insufficient under the M.P.E.P. (See, e.g., M.P.E.P. §2145.)

For at least this reason, Claims 1, 27, and 48-49, as amended, are allowable over the cited references. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 1, 27, and 48-49 and all claims that depend from those claims.

Claim 4 recites an election key operable to store one or more ballot questions customized for the voter on the election key. Claims 30 and 50 recite similar, although not identical, elements. Neither *Challener* nor *Anno*, whether considered alone or in combination disclose an election key operable to store one or more ballot questions customized for the voter. With respect to Claims 4, 30, and 50, the Examiner states that *Challener* discloses a voter customized question based on the smart card – 'What is my pin number?' – that results in a different answer for each user. (Office Action mailed 3/23/03, page 3, ¶4). However, the question "what is my pin number?" is neither a *ballot* question nor is it a question customized

for the voter. *Challener* merely discloses asking the user for a PIN number in order to verify the user's identity and to allow the user to continue with the voting process. (*Challener*, FIGURE 6, items 343, 345; Col. 7; Lines 1-15). In fact, a user does not even receive a ballot until after the PIN number has been verified. (*Challener*, Col. 7; Lines 14-16). Clearly, asking a user "what is my pin number?" is not a ballot question. Ballot questions, as contemplated by the present application, may include, but are not limited to, questions relating to the voting process itself, such as which candidate to vote for or how to vote on a referendum question. (Page 10; Lines 27-29).

For at least this reason, Claims 4, 30, and 50 are allowable over the cited references. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 4, 30, and 50.

Claim 9 recites a voting record comprising a unique identifier linking the voting record to a particular computing device. The computing device of Claim 9 contains all the limitations of Claim 1, particularly that the voting device is operable to present ballot questions to the voter based on information retrieved from the election key. Claim 15 recites similar, although not identical, limitations. The Examiner states that *Challener* discloses a voting record/ballot linked to a particular computing device through the public key of the journal server. (Office Action mailed 3/13/03, page 4, ¶6, citing *Challener*, Col. 8; Line 15). In *Challener*, the ballot is linked to the journal server ID. However, the computing device of Claim 9 is not just any generic computing device (such as a journal server). Rather, the computing device of Claim 9 is operable to present ballot questions to the voter, as recited in Claim 1. In contrast, the journal server in *Challener*, to which the ballot is linked by an ID, records the voting results, but does not present ballot questions to the user. Therefore, the computing device linked to the voting record via a unique ID of Claims 9 and 15 is distinctly different from the journal server linked to the ballot via an ID as disclosed in *Challener*.

For at least this reason, Claims 9 and 15 are allowable over the cited references. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 9 and 15.

Claim 17 recites an encoded ballot operable to store an anonymous voter identifier to link the encoded ballot to the voter. Neither *Challener* nor *Anno* disclose this element. The Examiner states that "a voter ID is present" in *Challener* (Office Action mailed 3/13/03, page 4, ¶10, citing *Challener*, Col. 8; Line 28). *Challener* merely discloses that the journal server records the voter ID and then records the encrypted ballot. (*Challener*, Col. 8; Lines 26-30). However, *Challener* fails to disclose that the encoded ballot is operable to store the anonymous voter ID, as recited in Claim 17. Furthermore, *Anno* is silent with respect to an encoded ballot operable to store the voter's ID.

For at least this reason, Claim 17 is allowable over the cited references. Therefore, Applicant respectfully requests reconsideration and allowance of Claim 17.

Claim 18 recites one or more computer devices operable to audit whether an appropriate number of selections have been made by the voter as governed by election laws and the particular ballot questions. Claims 41 and 56 recite similar, although not identical, elements. Claim 43 discloses detecting irregularities in voter selections. With respect to Claims 18, 41, 43, and 56, the Examiner states that *Challener* discloses these elements because the term "completing the ballot" is understood to mean properly filling out the ballot. (Office Action mailed 3/13/2003, page 5, ¶1). In addition, the Examiner also states that the phrase "encrypts the completed ballot" (*Challener*, Col. 8; Lines 9-12) implies that the user must complete the ballot first. However, "complete" does not necessarily equate to correct or error free. Under the Examiner's definition of "complete," all ballots would be free from errors when the voter turns them in. However, merely because *Challener* refers to a ballot as "complete" does not mean that the ballot complies with voting regulations or is devoid of irregularities. For example, a "completed" ballot may include too few votes or too many votes. In the present application, one of the example purposes for auditing whether the appropriate number of selections has been made and detecting whether irregularities in voter selections are present is to determine whether there has been an undervote or an overvote and allow the voter to correct an error. (Page 20, Lines 26-30).

For at least this reason, neither *Challener* nor *Anno*, whether considered alone or in combination, disclose auditing whether the appropriate number of selections has been made by the voter based on the applicable election laws or detecting irregularities in voter

selections, as recited in Claims 18, 41, 43, and/or 56. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 18, 41, 43, and 56.

Claim 26 recites one or more computing devices operable to present an option to a voter allowing the voter to chose to write-in one or more voter selections and a ballot generator operable to create a write-in selection space on the encoded ballot. Claims 46 and 57 recite similar, although not identical, limitations. *Challener* fails to disclose giving the voter the option to chose to write-in a selection or a ballot generator operable to create a write-in selection space on the ballot. The Examiner states that *Anno* provides for a keyboard and, since election laws dictate a write-in option, it is implied that the system would have to make the option available. (Office Action mailed 3/13/03, page 5, ¶4, citing *Anno*, Col. 4; Lines 27-29). However, despite fact that the *Anno* device provides a keyboard and that election laws may require a write-in option, *Anno* fails to disclose a ballot generator operable to create a write in selection space on the encoded ballot or a computing device operable to give the voter the option to cast a write-in vote.

Furthermore, while *McClure* discloses that its system allows the voter to input a write-in candidate via a keyboard (*McClure*, Col. 19; Lines 16-36), the reference does not disclose that a ballot generator is operable to create a write-in space on an encoded ballot, as recited in Claim 26, and similarly in Claims 46 and 57. In addition, while *Willard* discloses the ability for a voter to enter a write-in candidate by speaking that candidate's name in response to an audible instruction to enter a write-in candidate (*Willard*, Col. 8; Lines 41-44 and 61-65), *Willard* is silent as to the ability of a ballot generator to create a write-in selection space on an encoded ballot.

For at least these reasons, Claims 26, 46, and 57 are allowable over the art of record. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 26, 46, and 57.

Claim 62 recites a computing device comprising a touch-sensitive screen operable to receive voter selections when the voter touches a location on the screen where the computing device is operable to determine a voter selection regardless of where the voter touches the touch-sensitive screen. Claim 71 recites similar, although not identical, elements. The Examiner notes that *Challener* discloses the use of a touch-sensitive screen. (Office Action

mailed 3/13/03, page 6, ¶4, citing *Challener*, Col. 4; Lines 39-40). *Challener* merely makes reference to the fact that a touch screen may be used for voting, but the reference fails to disclose the ability to determine a voter selection *regardless of where the voter touches the touch-sensitive screen*, as recited in Claims 62 and 71 of the present application.

Furthermore, Claims 62 and 71 depend from Claims 1 and 27, respectively, which have been shown above to be allowable over the cited references. For at least these reasons, Claims 62 and 71 are allowable over the cited references. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 62 and 71 and all claims that depend from those claims, including Claims 63, 64, 72, and 73.

The Examiner rejects Claims 2 and 28 under 35 U.S.C. §103(a) as being unpatentable over *Challener* as modified by *Anno* and further in view of U.S. Patent No. 5,992,570 issued to Walter, et al. ("Walter"). Claims 2 and 28 depend from Claims 1 and 27, respectively, which have been shown above to be allowable over the cited references. For at least this reason, Claims 2 and 28 are allowable over the cited art. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 2 and 28.

The Examiner rejects Claims 3 and 29 under 35 U.S.C. §103(a) as being unpatentable over *Challener* as modified by *Anno* and further in view of U.S. Patent No. 5,412,727 issued to Drexler, et al. ("Drexler"). Claims 3 and 29 depend from Claims 1 and 27, respectively, which have been shown above to be allowable over the cited references. For at least this reason, Claims 3 and 29 are allowable over the cited art. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 3 and 29.

The Examiner rejects Claims 12-13, 38-39, and 54-55 under 35 U.S.C. §103(a) as being unpatentable over *Challener* as modified by *Anno* and further in view of U.S. Patent No. 6,250,548 issued to McClure, et al. ("McClure"). Claims 12-13, 38-39, and 54-55 depend from Claims 1, 27, and 49 respectively, which have been shown above to be allowable over the cited references. For at least this reason, Claims 12-13, 38-39, and 54-55 are allowable over the cited art. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 12-13, 38-39, and 54-55.

The Examiner rejects Claims 63-64 and 72-73 under 35 U.S.C. §103(a) as being unpatentable over *Challener* as modified by *Anno* and *McClure* and further in view of U.S. Patent No. 5,821,508 issued to Willard ("Willard"). Claims 63-64 and 72-73 depend from Claims 1 and 27, respectively, which have been shown above to be allowable over the cited references. For at least this reason, Claims 63-64 and 72-73 are allowable over the cited art. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 63-64 and 72-73.

The Examiner rejects Claims 25 and 66 under 35 U.S.C. §103(a) as being unpatentable over *Challener* as modified by *Anno* and further in view of *Willard*. Claims 25 and 66 depend from Claims 1 and 27, respectively, which have been shown above to be allowable over the cited references. For at least this reason, Claims 25 and 66 are allowable over the cited art.

Furthermore, Claim 66 recites reading an encoded ballot using an encoded ballot reader and presenting voter selections encoded on the encoded ballot to the voter to allow the voter to verify the voter selections. Claim 66 includes all the limitations of Claim 27, such as the limitation that the encoded ballots are tangible. Claim 25 recites similar, although not identical, limitations. The Examiner notes that *Challener* modified by *Anno* fails to disclose a system where the voter is permitted to verify voting selections. The Examiner also states that *Willard* teaches a means for permitting the voter to verify voting selections. (Office Action mailed 3/13/03, page 9, ¶6, citing *Willard*, Col. 9; Lines 22-30). However, in *Willard*, the voter is given the opportunity to audibly verify voter selections for the electronic ballot. This ballot is not in *tangible* form, as recited by the limitations of Claim 66, and similarly for Claim 25.

For at least these reasons, Claims 25 and 66 are allowable over the cited references. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 25 and 66.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Brian W. Oaks, Attorney for Applicant, at the Examiner's convenience at (214) 953-6986.

Although Applicant believes that no fees are due, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant



Brian W. Oaks
Reg. No. 44,981

Correspondence Address:

2001 Ross Avenue, Suite 600
Dallas, Texas 75201-2980
(214) 953-6986

Date: 6/3/03